IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

FLORENCE DIVISION

Zachary Strickland, Jerry I. Strickland and Marsha Strickland Plaintiffs	)	
v.	)	Civil Action No.: 4:00-1391-2527
Ford Motor Company and Fair Bluff Motors, Inc. Defendants	)	

MEMORANDUM IN SUPPORT OF MOTION IN LIMINE TO EXCLUDE THE TESTIMONY OF PROFESSOR JOHN FREEMAN

Defendant Ford Motor Company ("Ford") states as follows in support of its Motion In Limine To Exclude The Testimony Of Professor John Freeman.

I. BACKGROUND

This product liability action arises from a May 9, 1997 vehicle collision near Aynor, South Carolina. Zachary Strickland, operating a 1997 Ford F-150 pickup truck, drove through a stop sign and collided with a medium duty 1994 GMC truck pulling a backhoe tractor. Strickland was ejected from his truck and sustained serious injuries. On May 9, 2000, Zachary and his parents filed this action against Ford Motor Company alleging that the brakes, seat belt and door latches on the F-150 are defective and unsafe, and that the accident and Zachary's injuries were caused by Ford's negligent, reckless and willful conduct. *Complaint,* ¶9.

Plaintiffs have designated Professor Freeman, a law professor at the University of South Carolina, to testify concerning Ford's alleged misconduct in responding to discovery in this and other actions. Professor Freeman accuses Ford and its lawyers of various bad acts relating to the

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discovery process. The proffered testimony is improper character evidence under Fed. R. Evid. 404, and is otherwise inadmissible. Ford's conduct in responding to discovery is neither relevant nor admissible at trial. Discovery disputes are resolved by motion prior to trial, and are not a matter for resolution by the jury. Even if such evidence were somehow admissible, offering such evidence through Professor Freeman would improperly usurp the exclusive role of the Court in setting forth the law and the role of the jury in determining the propriety of Ford's conduct. The proffered testimony will not assist the trier of fact in understanding the evidence or in determining a fact in issue, and is inadmissible under Fed. R. Evid. 702 and 404. However distinguished Professor Freeman may be as a law professor, his proposed testimony has no place before a jury of this Court.

II. PROFESSOR FREEMAN'S ANTICIPATED TESTIMONY

Ford deposed Professor Freeman on June 30, 2004. As described by Professor Freeman, the crux of his proposed trial testimony concerns the conduct of Ford's inside and outside lawyers, and Ford employees, in responding to discovery in this action. (Dep. Trans. p. 58, attached as Exhibit A). If permitted, Professor Freeman will offer the following "opinions":

- Robert Wheelock, an employee of Ford, perjured himself in his deposition and presented a false Affidavit to the Court. (Dep. Trans. p. 43-44, 67)
- Mohammed Ayub, an engineer with Ford, perjured himself when he stated he did not know about certain crash tests conducted by Ford. (Dep. Trans. p. 46, 67)
- Ford committed serious discovery abuse in this case concerning its disclosure and production of documents related to the Ford F-150 door latch (Dep. Trans. p. 67)

- Ford engaged in improper acts by "buying secrecy" with a Protective Order in a matter style *Bringhurst v. Ford Motor Company.* (Dep. Trans. p. 73-74)

- Ford improperly invoked the attorney-client privilege to defeat plaintiff's investigations. (Dep. Trans. p. 77-78)

- Interrogatory responses by Ford employees Kimberly Bowen-Adair and Jay Logel (which were the subject of a separate discovery motion filed by plaintiffs and resolved in Ford's favor) were evasive and/or non-responsive. (Dep. Trans. p. 111)

- Ford's outside counsel, Joel Smith, withdrew from representing Ford in this action because of his alleged concern with Ford's misconduct. (Dep. Trans. p. 46)

Significantly, Professor Freeman bases his opinions in large part on the representations of plaintiffs' counsel made during approximately forty-five to fifty hours of conversation between them. (Dep. Trans. p. 66). In other words, Professor Freeman proposes nothing more than to restate the vitriolic arguments made by plaintiffs' counsel in pursuit of several largely unsuccessful discovery motions against Ford. Dissatisfied with the Court's rulings on those motions, plaintiffs improperly seek to renew their arguments under the guise of expert witness testimony. Such efforts should be rejected.

III. ARGUMENT

The admissibility of expert testimony is a preliminary question to be determined by the Court, and the party offering expert testimony must establish the admissibility of the testimony and the qualifications of the expert witness. *See Fed. R. Evid. 104(a); Daubert v. Merrill-Low Pharmaceuticals,* 509 U.S. 579, 597 (1993); *Kuhmo Tire Co., Ltd. v. Carmichael,* 526 U.S. 137 (1999). Fed. R. Evid. 702 provides that "if scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education, may testify thereto

in the form of an opinion or otherwise, if the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case." Thus the Court must determine at the outset whether a witness' proffered testimony meets these narrow requirements. *Daubert,* 509 U.S. at 591. The Court's gatekeeping function applies not only to scientific knowledge, but to any testimony based on "technical" or "other specialized knowledge". *Kumho Tire Company*, 526 U.S. at 141. The gate should be closed as to Professor Freeman.

A. Professor Freeman's Proposed Testimony is Inadmissible Character Evidence Under Rule 404

Plaintiffs have designated Professor Freeman to testify concerning, among other things, "the propriety of Ford's actions or inaction relating to . . . litigation discovery in the context of the standards of truthfulness, fair dealing, punctuality, and professionalism under the Rules of Professional Conduct," and Ford's alleged "discovery abuse and Ford's general dilatory discovery tactics in this and other similarly situated litigation." *Plaintiffs' Supplemental Rule 26 Expert Disclosure,* attached as Exhibit B. The proffered testimony is not relevant to any material issue of fact concerning the design or performance of the Strickland pickup truck and is, at best, improper and unfounded character evidence.

Pursuant to Fed. R. Evid. 404(a), absent some exception unavailable here, "evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith." Similarly, pursuant to Fed. R. Evid. 404(b), "evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith.

This case concerns the design and performance of the Strickland F150 pickup truck; Zachary Strickland's role in causing the May, 9, 1997 accident; and the cause of Zachary

Strickland's injuries. The conduct of Ford and its counsel *in discovery* in this and other actions is simply not relevant to the design and manufacture issues to be decided by the jury, and such evidence should be excluded.

To the extent this evidence of supposed bad acts is offered in support of plaintiffs' claim for punitive damages, it is likewise inadmissible. The law is now well-settled that "[a] defendant's dissimilar acts, independent from the acts upon which liability was premised, may not serve as the basis for punitive damages." *State Farm Mutual Insurance Co. v. Campbell,* 123 S.Ct. 1513, 1523 (2003). A defendant is to be punished only for the particular conduct that harmed the plaintiff, "not for being an unsavory individual or business." *Id.* "Due process does not permit courts, in the calculation of punitive damages, to adjudicate the merits of other parties' hypothetical claims against a defendant under the guise of the reprehensibility analysis . . . ." *Id. See also Jimenez v. DaimlerChrysler Corp.*, 269 F.3d 439, 450 (4th Cir. 2001).

In *Jimenez,* plaintiffs alleged their son was killed in a 1994 accident because of a defective rear liftgate latch on a 1985 Dodge Caravan. As alleged here against Ford, plaintiffs alleged that DaimlerChrysler was aware that the latches on the Caravan were defective, and that it attempted to conceal the problem from the National Highway Transportation Safety Administration and the public. At trial, the jury returned its verdict for the plaintiff, and awarded substantial compensatory and punitive damages.

In response to DaimlerChrysler's appeal of the punitive damages award, plaintiffs argued, among other things, that the award of punitive damages was proper based on evidence of Chrysler's post-design conduct, including its alleged efforts to hide and conceal the latch problems rather than recall the vans. 269 F.3d at 444.

DaimlerChrysler, in response, argued that in assessing Chrysler's conduct, the jury should have been limited to Chrysler's state of mind at the time the van was designed, not its conduct subsequent to the sale of subject van. *Id.* The Fourth Circuit agreed with DaimlerChrysler, and set aside the award of punitive damages.

> [I]n this case we must determine whether the jury was presented with evidence that showed it was highly probable that DaimlerChrysler acted in a willful, wanton, or reckless manner at the time of the conduct supporting the claims of negligent design or strict liability - i.e., during the 1984-85 time period when the liftgate latch was designed and when the Caravan was delivered from the factory. . . .
>
> The Estate argues more forcefully, however, that the post-design conduct relates back to prove consciousness of wrongdoing, just as would any coverup . . . But to succeed in this effort, the Estate must establish that the post-design conduct clearly and convincingly points to DaimlerChrysler's consciousness of wrongdoing *at the time it designed the minivan and the liftgate latch* and not to consciousness of wrongdoing thereafter, such as wrongful failure later to initiate a recall.

Id. at 451 (emphasis in original).

Here, Professor Freeman proposes to address conduct that occurred years after the design of the F150 door latch and the sale of the Strickland vehicle. Such testimony concerns conduct independent of the conduct on which liability is premised and, under *Jimenez* and *State Farm,* the testimony cannot serve as the basis for punitive damages.

Any evidence as to Ford's conduct in the course of discovery in this or other cases is wholly unrelated to plaintiffs' allegations that the F-150 truck operated by Strickland in May, 1997 was defectively designed and manufactured, or that the alleged defects caused Strickland's injuries. Such evidence is not relevant, and should be excluded, whether offered by an expert witness or in some other fashion.

Daubert cautions that in conducting its gatekeeping role, trial courts should be mindful of other restrictions on the admissibility of evidence, such as Fed. R. Evid. 403, because "expert evidence can be powerful and quite misleading." *Daubert,* 508 U.S. at 595. The proffered character evidence from Professor Freeman, if not inadmissible outright, should be excluded under Rule 403 because the probative value of the evidence is substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury, and by considerations of undue delay and waste of time.

B. Professor Freeman's Proposed Testimony Improperly Usurps The Role Of The Jury And The Court

In assessing the admissibility of proffered expert testimony, the trial court must determine whether the testimony will usurp its own role in instructing the jury on the law, or usurp the role of the jury in applying that law to the facts before it. *U.S. v. Lumpkin,* 192 F.3d 280, 289 (2d Cir. 1999). An expert witness may not, under the guise of helpfulness, tell the jury what result to reach or communicate a legal standard. *In re Rezulin Products Liability Litigation,* 309 F.Supp.2d 531, 541 (S.D.N.Y. 2004). Rule 702 bars expert witnesses from usurping the role of counsel in making arguments at trial, the role of the jury in interpreting evidence, and the role of the Court in determining the law applicable to the case. *Id.* Professor Freeman's proffered testimony runs afoul of each restriction.

1. Professor Freeman's Proposed Testimony Improperly Usurps The Role Of The Jury

Professor Freeman proposes to testify that Ford's lawyers and employees engaged in misconduct in discovery. Even assuming evidence on this issue is somehow admissible, Professor Freeman improperly seeks to usurp the role of the jury in assessing the propriety of Ford's conduct and determining the credibility of the witnesses.

Among other things, Professor Freeman proposes to testify that two Ford employees, Robert Wheelock and Mohammad Ayub, perjured themselves during discovery.

> A I think Ford's been guilty of discovery abuse – serious discovery abuse in this case concerning the door handle, the document disclosure and concerning efforts to place evidence out of the reach of plaintiff's counsel. That's a headline
>
> Q Are there subtitles to that headline
>
> A Various manifestations of what I consider to be improper behavior. I mention perjury. Mr. Ayub has lied, has admitted he lied....
>
> Q When you say he admitted he lied, are you referring to the transcript you read earlier where he admitted he was incorrect in an earlier deposition.
>
> A Yep. Exactly. Mr. Wheelock I believe lied in his deposition and he presented a false affidavit to the Court, and I also fault him for supplying false and fraudulent information to Mr. Smith for Mr. Smith's reliance in the March 27 letter and as counsel for Ford. (Dep. Trans. p. 67).

Professor Freeman's accusations are unfounded, and are nothing more than a rehash of the unsuccessful arguments of the plaintiffs' counsel in pursuing a supervised deposition of Mr. Wheelock. *See Plaintiffs' Motion to Compel the Deposition of Robert Wheelock Under Court Supervision in Florence South Carolina,* attached as Exhibit C.

> COURT: I'm not going to do that. There's been – There's no indication to me that that is a step that's necessary at this point. I think you just need to go take this deposition, I understand you're going to California, and we can arrange it where, you know we could get on a conference call during the deposition if y'all let me know when it is, because I don't want y'all to have a wasted trip to California. By the same token, I don't intend to be present for the entire deposition. (Hearing Trans. 05/19/04, p. 67, attached as Exhibit D.)

Moreover, the proposed testimony improperly usurps the role of the jury in making determinations of credibility.

If, as plaintiffs contend, Mr. Wheelock or Mr. Ayub lied about matters that will be at issue at trial, then it is the job of plaintiffs' counsel, not Professor Freeman, to make those lies known to the jury through impeachment or other proper procedural methods. It is not, however, the role of an "expert" to supplant plaintiffs' counsel and pronounce the employees liars based on his own review of their deposition testimony.

The law is likewise well-settled that an expert is prohibited from offering opinion evidence as to the credibility of a party. *See United States v. Cecil,* 836 F.2d 1431 (4th Cir. 1988); *H.C. Smith v. Outboard Marine Corp.*, 181 F.Supp.2d (W.D. Mich. 2002); *Lumpkin, supra.* In *Cecil*, the defendant appealed from the district court's ruling prohibiting expert testimony that the government's key witness had a "narcissistic personality disorder". The Fourth Circuit agreed, holding that Rules 701, 702 and 403 provide "assurance against the admission of opinions which merely tell the jury what results to reach, somewhat in the manner of the oath-helpers of an earlier day". *Cecil,* 836 F.2d at 1441. The court made clear that the determination of a witness's credibility is strictly for the jury, and opinions on credibility are for the jurors themselves to form. *Id.* at 1441-42.

Here, plaintiffs improperly seek to have Professor Freeman impose on the jury his personal view of the credibility of Ford employees, based on his understanding of the issues as explained to him by plaintiffs' counsel, as opposed to letting the jurors make their own credibility assessments based on the evidence presented at trial and the demeanor of the witnesses. Such testimony should be excluded.

2. Professor Freeman's Proposed Testimony Improperly Usurps The Role Of The Court

Having been largely unsuccessful in their vitriolic discovery motions against Ford, plaintiffs sought and found a more sympathetic ear in Professor Freeman. It is not his role, however, to judge Ford's discovery conduct.

If permitted, Professor Freeman will testify that Ford engaged in misconduct by allegedly failing to timely disclose certain documents, and by allegedly providing evasive and/or non-responsive answers to discovery.

> A I fault Ford in-house lawyers for having either non-existent or miserably inadequate controls over documents concerning door handle defects or alleged defects. I think it is astounding and just outrageous that massive amounts of documents concerning a planned half-a-billion dollar investment in fixing a problem – though I'm aware that Ford later denied that there – and still denies that there was any problem at all. That these documents which are clearly relevant, which any first-year law student would understand to be clearly relevant to a F150 PN 96 door opening case were hidden for years by Ford and by hidden, I want to be explicit. Ford originally produced a CDR – CD not read/write but –
>
> Q CD rom?
>
> A CD rom disc in a non-searchable way, basically, pictures of documents which is for whatever reason there was software available that was not supplied to counsel. The representation was this is the door handle collection, this is what we got. I don't believe Kimberly Bowden-Adair and other similarly knowledgeable people at Ford could possibly have believed that to be true because they had to know about the PN96 problem. They had to know about the

6J08 problem, 6J01. They had to know that these documents existed. They had to know about the settlement documents. I believe they had the settlement documents, and instead, they hid those documents. (Dep. Trans. p. 67-69, l . 25-6).

A . . . we've gotten Logel's interrogatory answers and Kimberly Bowden-Adair's interrogatory answers. And as a lawyer and as a law professor in the ethics area, I sit here and say does Ford really get it. You've – those orders – those interrogatories, as I understand, were sent out under court order – or with – pursuant to court permission, and what I find in there is evasion. I find not answering discovery requests by those people. Then I find them not even signing their own answers to interrogatories that are posed to them, but some stamp by Mr. Smith signing that. (Dep. Trans. p. 71-72).

Similarly, if permitted, Professor Freeman will testify that Ford's inside counsel violated various South Carolina professional guidelines, (Dep. Trans. p. 150-152), and that Ford's former outside counsel, Joel Smith, withdrew from representing Ford because he could not abide the unethical conduct.

A . . . Joel writes actually two letters. One, and then he corrected the typo and the other one. I call these noisy notice of withdrawal letters, though he did not withdraw at this time, but he's laying the groundwork for a withdrawal. As you know, under 1.6, essentially you are not to divulge freely information given to you by your client. One of the rare instances when you can disclose information is where you believe that your client has engaged in improper acts and has involved you in the improper acts. And what you are allowed to do then under the comments of Rule 1.16 is what's called a

> noisy notice of withdrawal disavowing documents, withdrawing things, basically alerting the other side there are grave problems with this. And that's what he did on November 21, 2003, in my estimation, which he then followed with his withdrawal from the case on November 26. (Dep. Trans. p. 39-40).

Professor Freeman's unfounded accusations lack any support, and they are not relevant to any issue to be decided by the jury. The same unfounded arguments have previously been made by plaintiffs' counsel and rejected.

> MR. BELL: . . . Prior to the hearing, Joel Smith told me that he sent, I believe, Deidre McCool to Dearborn to personally interview these engineers. We got a call from Joel Smith subsequent to that, and before your hearing, he said Ed, I'm really sorry, but they didn't do – Ford lied to me, they did not do the sweep, and we're sorry we accused you what you're doing. That's what led to the uncovering this investigation. So we get a promise we're going to get these things turned over. We get initially in October the first set of documents. Although Ford was required to do it in 30 days, they took almost five months to complete the discovery responses. The first set of documents, Kevin Dean looked at, you wouldn't believe what we found. We found this 14-D. We found several other documents, some of which had Jay Logel's name on it. Joel called – Kevin called Joel Smith and said Joel, have you seen these documents? He said no, I haven't looked at them. I know I was told we got some coming. He said, you better go look at them. According to Joel Smith, they immediately started looking at these documents, and it was at that time we got the call from Joel Smith saying he's going to have to withdraw as counsel, because there had been a misrepresentation to this Court, there had been a misrepresentation in the Affidavit, and there had been perjured testimony in a deposition . . .
>
> THE COURT: Well I'm sitting up here, and it chaps me because of all this stuff you're going into. I like to read things before I get in here so I have some idea what I'm dealing with. And you are talking about all kinds of things, making accusations, saying things as a fact, and it might be

> so, but I don't know that to be the case. And it puts me in a tough situation to try to remember everything that you're going through right now, when its not in your brief. . . this thing about Joel Smith and he said Ford lied, you're making some pretty serious accusations . . .
>
> MR. WILKERSON: If the Court please, with the Court's permission, there are too many cooks in the kitchen, I don't purport to argue the merits of the issue, but I rise for the sole purpose of addressing Mr. Bell's very elaborate and detailed jury argument to the Court, that he just presented to the Court, what he presented to be factual statements, starting from A to Z, getting to the point where he believes he's entitled to these things.
>
> THE COURT: I understand. I'll let you put whatever you want on the record. I'm not going to consider any of that, because that is unfair to me, in trying to make a decision, and making factual assertions and accusations like that, I'm not going to consider anything that is not in the brief. (Exhibit D, Hearing Trans. 05/19/04, p. 20-21 & 29)

Whatever the accuracy of the allegations, it is black letter law that an expert witness is prohibited from offering legal conclusions on domestic law. *See, e.g., Burkhart v. WMATA,* 112 F.3d 1207, 1213-14 (D.C.Cir. 1996) ("Each courtroom comes equipped with a 'legal expert,' called a judge, and it is his or her province alone to instruct the jury on the relevant legal standards"; expert testimony consisting of legal conclusions cannot properly assist trier of fact in understanding the evidence or determining facts in issue."); *In re Initial Public Offering Sec. Litig.*, 174 F. Supp. 2d 61, 64-65 (S.D.N.Y. 2001) (collecting cases).

Professor Freeman's testimony has previously been excluded on just this basis. In *Dawkins v. Fields,* 354 S.C. 58, 580 S.E.2d 443 (2003), the Supreme Court of South Carolina affirmed the exclusion of an affidavit executed by Professor Freeman and offered in opposition to a motion for summary judgment on the grounds the affidavit contained primarily legal arguments. *Id.. 580 S.E.2d* at 437 ("While it is true that an opinion is not objectionable because

it embraces an ultimate issue to be decided by the trier of fact, Professor Freeman's affidavit inappropriately attempted to usurp the trial court's role in determining whether petitioners were entitled to summary judgment.") (citations omitted).

In *Adalman v. Baker Watts & Co.*, 807 F.2d 359 (4th Cir. 1986), the Fourth Circuit, *sua sponte*, addressed this question in the context of proffered testimony concerning the materiality of information withheld from an offering memorandum.

> The analysis here begins with the proposition that under our system it is the responsibility -- and the duty -- of the court to state to the jury the meaning and applicability of the appropriate law, leaving to the jury the task of determining the facts which may or may not bring the challenged conduct within the court's instruction as to the law.
>
> Under circumstances involving domestic law, this court can conceive of no circumstances which would shift this burden from the court to the jury, where the jury judgment would be influenced, if not made, on the basis of expert testimony which would undoubtedly follow the usual pattern of conflicting expert opinions.

807 F.2d at 366.

Professor Freeman's proposed testimony runs directly afoul of *Adalman*. Plaintiffs would have Professor Freeman define the law applicable to discovery (e.g. the "standards of truthfulness, fair dealing, punctuality, and professionalism under the Rules of Professional Conduct applicable to lawyers involved in matters in Federal District Court in South Carolina"), and then opine whether Ford complied. It is, however, the Court's exclusive role to define the discovery law applicable to this case, and it is likewise the Court's exclusive role to resolve discovery disputes and, pursuant to Fed. R. Civ. P. 37, to address any alleged unethical behavior.

Indeed, Plaintiffs in this case have filed various discovery and sanctions motions based on the very conduct that they now seek to present to the jury through Professor Freeman. While

the Court has in some instances directed Ford to respond to discovery requests, it has also denied in part plaintiffs' motions, and it has not found any sanctionable conduct. Dissatisfied, plaintiffs now seek to have Professor Freeman assume the Court's role and declare to the jury that Ford and its lawyers are bad actors. This is not his role to assume, and any such testimony should be excluded.

C. Professor Freeman's Proposed Testimony Is Inadmissible Personal Opinion That Will Not Aid The Jury

The subject of an expert's testimony must be "scientific . . . knowledge". *Daubert,* 509 U.S. at 590. "Scientific" implies a grounding in the methods and procedures of science; and "knowledge" connotes more than subjective belief or unsupported speculation. *Id.* In order to qualify as "scientific knowledge" an inference or assertion must be derived by scientific method and the proposed testimony must be supported by appropriate validation. *Id.* The requirement of knowledge is to guard against the admission of subjective or speculative opinions. *In re Rezulin,* 309 F.Supp.2d at 531.

In re Rezulin is particularly instructive on the issues presented by Professor Freeman's proposed testimony. In that case, also a product liability action, plaintiffs proffered expert testimony concerning a drug company's alleged unethical conduct in the suppression of research and the manner in which it conducted clinical trials. *Id.* at 539. The drug company successfully moved to exclude the expert testimony on the grounds it consisted of nothing more than the witnesses' personal, subjective opinions. *Id.* at 543. As the court explained, even assuming that expert testimony on the ordinary practices of a profession or trade may be appropriate to enable the jury to evaluate the conduct of the parties, the testimony must still comport with the reliability and helpfulness requirements of Rule 702. *Id.* Where opinions regarding ethical obligations are, at their core, simply that sponsors of clinical research should be honest, such

testimony is "so vague as to be unhelpful to a fact-finder." *Id.* Professor Freeman's proposed testimony here is, at its core, that Ford and its lawyers had an obligation to be honest and forthcoming, and his testimony is likewise of no help to the jury.

Similarly, as with the witnesses in *In re Rezulin* who accused the defendant Warner-Lambert Company of unethical conduct, Professor Freeman's proposed testimony that Ford acted unethically in discovery is nothing more than his personal and subjective opinion, unsupported by any systemic inquiry, and thus is inadmissible. While Professor Freeman spent days discussing this case with plaintiffs' counsel and absorbing their vitriol against Ford, he has not spoken with any current or former Ford employees. (Dep. Trans. p. 51). While he is critical of Ford's discovery conduct in producing documents, he has no direct knowledge about how the documents were collected and produced by Ford's counsel. (Dep. Trans. p. 55, 128). While he is critical of Mr. Wheelock's testimony about the role of the Critical Concerns Review Group ("CCRG") in the door latch investigation, Professor Freeman does not have any personal knowledge about the operation of the CCRG. (Dep. Trans. p. 55). Indeed, while he seeks to divine the reasons for Joel Smith's withdrawal from representing Ford, he has not spoken to Mr. Smith about it, and admittedly lacks any direct information about the circumstances leading to Mr. Smith's withdrawal. (Dep. Trans. p. 152).

Indeed, Mr. Freeman concedes that he did not follow any established methodology in forming his opinions, and that his opinions are based on his personal views and experience.

> Q In reaching your opinions, I can guess, but I'm not going to guess, tell me what methodology you used to reach those opinions.
>
> A The legal profession doesn't have any kind of mechanical yardstick for determining when something is okay or not okay. From

an ethics standpoint, we have certain standards . . . And the – it's a combination of what I've seen, what I know concerning the applicable standards concerning what makes sense or what doesn't make sense, what's plausible and what's not plausible. It's led me down the road to the opinions that I hold. (Dep. Trans. p. 81-82).

A . . . I don't believe you have a half-billion dollar recall even being contemplated without a bunch of people – substantial people in the company knowing about it. And Mr. Wheelock was that, and I believe that his answer fits the evasion, the falsity theme of the treatment of this particular defect or alleged defect. (Dep. Trans. p. 90, l. 9-15).

Indeed, much of Professor Freeman's testimony is based on nothing more than information gleaned solely from conversations with plaintiffs' counsel. For example, Professor Freeman contends that Ford makes use of confidentiality orders when settling cases as a means to conceal those cases from future discovery. At his deposition, Professor Freeman cited two examples, *Bringhurst v. Ford* and *Medina v. Ford.* He had not, however, seen the Confidentiality Orders entered in those cases, and was basing his opinion solely on the representations of Mr. Bell.

Q But you have an opinion based on an agreement that you haven't seen?

A I have an opinion based on Mr. Bell's contact with the lawyer and his terror at doing anything that could jeopardize him. (Dep. Trans. p. 104).

Similarly, his opinion that Ford lawyers and employees concealed documents is based solely on statement from plaintiffs' counsel, not a personal investigation of what actually transpired.

A ...I was told when Salmon [a Ford employee] left, he gave the documents to Adair, Bowen-Adair. That may not be true, but that was what I understood. It's what I testified to and its what he [Mr. Bell] just said.

Q And your source of information from that was Mr. Bell?

A That's right. (Dep. Trans. p. 113-114)

. . .

A . . . Now, what I understand, based on counsel, is a forward sweep for documents is a term of special significance to Ford that doing a document sweep has special meaning.

Q What's the basis of that understanding?

A Counsel telling me that when they do a sweep – you remember –

Q Counsel, Mr. Bell?

A Yeah, Mr. Bell. . . (Dep. Trans. p. 126-127).

However distinguished and able Professor Freeman may be as a law professor, his proposed testimony is not insulated from scrutiny under Rule 702. Professor Freeman's testimony is speculative, subjective, and is not based on any recognized methodology. It is nothing more than his personal opinion, derived largely from the one-sided representations of plaintiffs' counsel in hours of conversation, and has no place before a jury.

The trial judge in *In re Rezulin* started his opinion with a useful history lesson about the use of "compurgators" or "oath helpers" in jury trials of old.

> Among the antecedents of our modern jury trial was wager of law, or compurgation, a form of trial by ordeal. The

> accused found a number of people and then took a solemn oath that he or she was innocent. The companions, or "compurgators" as they were called, then swore that the oath which he [or she] had taken was clean. . . . They d[id] not swear to the facts of the case, but merely to their judgment that the accused is a credible person.
>
> A practice reminiscent of wager of law has become fashionable among some well-financed litigants - the engagement of "expert" witnesses whose intended role is more to argue the client's cause from the witness stand than to bring to the fact finder specialized knowledge or expertise that would be helpful in resolving the issues of fact presented by the lawsuit. These "experts" thus are loosely analogous to compurgators, also known as oath helpers, in that they lend their credentials and reputations to the party who calls them without bringing much if any relevant knowledge to bear on the facts actually at issue.

309 F.Supp.2d at 538 (footnote omitted).

Professor Freeman is a compurgator. He has added his voice to the chorus of plaintiffs' counsel accusing Ford of misdeeds, but he brings no relevant knowledge or expertise to bear on the facts at issue in this action. He should not be permitted to testify.

IV. CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court exclude the proposed testimony of Professor Freeman.

FORD MOTOR COMPANY

December _____, 2004

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Memorandum was mailed, postage prepaid to the following counsel of record:

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Diane A. Bolton

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

ZACHARY STRICKLAND, JERRY I. STRICKLAND, and MARSHA B. STRICKLAND,

Plaintiffs,

vs. CIVIL ACTION CASE NO. 4:00-1391-23

FORD MOTOR COMPANY and FAIR BLUFF MOTORS, INC.,

Defendants.

DEPOSITION OF: JOHN FREEMAN

DATE: June 30, 2004

TIME: 9:08 a.m. - 1:54 p.m.

LOCATION: Offices of
TURNER, PADGET, GRAHAM & LANEY, P.A.
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Columbia, SC

TAKEN BY: Counsel for the Defendants

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APPEARANCES OF COUNSEL:

ATTACHMENT
A

These things don't have anything to do with your lawsuit. Go away. Forget about it. These on-side openings were not and, of course, could not be related to any inertial effect. You've been given complete discovery on the subject. It's not to the best of my knowledge or I am informed that lawyer to lawyer, you know, you don't have anything. Go away. You're wasting my time. You're wasting my client's money.

Now, this is followed by

Mr. Wheelock's affidavit. Mr. Wheelock's affidavit April 11th, 2003 is almost verbatim. In fact, if you look at Wheelock's affidavit, there's a line that's cut off here. On every copy of the March 27th letter that I have, there's a line that's cut off at the end of the first page. Wheelock's affidavit has got the line in there. And so Wheelock puts in an affidavit essentially lockstepping this letter saying go away, you've got nothing. There's nothing there. These investigations don't have anything to do with F150 trucks like you've got. They don't have anything to do with your case. You're wasting our time. You don't have anything.

Now, we know later, and this is why it's famous to me, that Joel writes actually two letters. One, and then he corrected the typo and the other one. I call these noisy notice of

withdrawal letters, though he did not withdraw at this time, but he's laying the groundwork for a withdrawal. As you know, under 1.6, essentially, you are not to divulge freely information given to you by your client. One of the rare instances when you can disclose information is where you believe that your client has engaged in improper acts and

has involved you in the improper acts.

And what you are allowed to do then under the comments of Rule 1.16 is what's called a noisy notice of withdrawal disavowing documents, withdrawing things, basically, alerting the other side there are grave problems with this. And that's what he did on November 21, 2003, in my estimation, which he then followed with his withdrawal from the case on November 26. So -- and what's interesting is though you've got the withdrawal of Wheelock's affidavit and the withdrawal of his letter pending, quote, Ford examining these documents, the 6J08 documents, to determine their effect, if any, upon the facts set out in the affidavit and the letter, you still have a brief come in which has never been withdrawn by Ford making it, basically, the same arguments as in Wheelock as in Joel's letter.

Q. That being this brief, Defendant's 19?

A. Yeah. Among other things, quote, plaintiffs are continuing their tactics of delay which they have employed since this case was filed

because they have no evidence of a defect involving any component of the Strickland truck. That's on page 10 of the memo, the memo that's dated March 21. "Defendants believe plaintiffs are engaging in

nothing more than delay tactics to try to continue harassing Ford with more irrelevant discovery requests and prevent this case from proceeding on a trial on the merits." And there's a document dated --

Q. Defendant's 19 actually was created before the Joel Smith letters you just read?

A. Yeah. That kind of mocks the plaintiffs. But there's a 4/16, April 16, brief. That's the one I'm referring to.

Q. And you're using your chronology that we identified earlier?

A. Yeah. And as far as I know, that brief has never been withdrawn. The brief claims that the door latch system is fine.

Q. Have you been made aware in your work that Mr. Smith -- Joel Smith represented to the court that his withdrawal was over financial reasons and not ethical reasons?

A. I saw that in John Wilkerson's colloquies with Judge Kosko, that, essentially, has nothing to do with anything ethical, but I'm not here as a business manager. I'm here as an ethics expert, and I know what's going on when people tell

you know, if his euphemism for grave disappointment -- lawyers don't like to accuse their clients of anything. I think he's done a pretty good job of handling this from his standpoint in a way least injurious to Ford. If he wants to call it a business decision that he made, God bless him.

Q. If he said to the court in Strickland that his withdrawal was strictly over financial arrangements with Ford, that would not change your opinion or be important to you at all?

A. You know, it would be a piece of evidence that I'd take into account. I'm telling you what a withdrawal of a letter and withdrawal of an affidavit, which is extremely unrare to see -- extremely unusual to see, tells me is going on and that's my view. That's what I hold.

Q. That's an opinion you've reached from those circumstances?

A. From all that I've read to this point. But, you know, there's more to it than that. Mr. Wheelock's deposition -- in his deposition, the same guy who gets his affidavit withdrawn and, apparently, was the source of information for Joel in Joel's March 27 letter, good old Mr. Wheelock, CCRG chair for 11 and a half years, as far as I can

tell, perjured himself in his deposition because he

was asked if CCRG is familiar with door latch casings, he says no.

In fact -- and what's so annoying about this to me, frankly -- this is on 8/29/01. Wheelock is deposed. Mister CCRG chair asked if he's familiar, quote, at all with allegations of door latch problems. And he says, Well, you know there's all kind of issues that we have at CCRG. Then he's asked if he is familiar specifically with door latch claims. Answer, I am not. That's deposition page 25, and yet who puts in the affidavit on CCRG door latch claims, you know, two years later? Mr. Wheelock, Mr. Wheelock whose affidavit then gets withdrawn.

Q. Do you know what materials he had available to him at the time of his deposition?

A. He had all the CCRG files on 6J01, 6J08, and he darn well knew that there were door latch problems with the Ford Explorer -- or Ford pickups, Ford F150 pickups. There's no question about that.

Q. When you say he knew, you're again relying on the fact that he had a previous involvement and a record, if you will, or presumably

a record as chair of the CCRG?

A. Right. And the door latch issue had percolated to the level where we now know that there was a -- from the evidence at least, temporarily a

recall number assigned and a price calculation in the hundreds of millions tied into that recall. Now, we're not talking about a missing trash can at the headquarters or paper clips that have been misplaced. We're talking about a-half-a-billion-dollar problem concerning F150 related PN96 door latches, which CCRG has investigated under his lead and, at one point, made a decision that it's a half-a-billion-dollar problem.

We're talking about a problem that is of such magnitude that when it comes out that this has happened, you have a page 1 story on the Detroit Newspaper, and the Detroit Newspaper is familiar with the automobile business. This is not some minor molehill of a hypothetical, possible somebody might say maybe there's a problem. This is a huge problem. And the question is asked about this huge problem of maybe the man within Ford who is most knowledgeable about the ins and the outs of the problem, and he says he doesn't know about it. And

I think it's perjury. And I also think Mr. Ayub was guilty of perjury with his line about not knowing about crash tests, which he got called on at his deposition in this case.

So believe me, you know, if I'm Joel Smith and I'm seeing, you know, some of my key witnesses saying things that don't seem to be the

truth, and I've been relying upon those people, I may have good business reasons, but I'll tell you what, I can call it financial because there's no amount of money that is going to get me to stay in this case. They can't pay me enough money to get me to stay in the case if that's the way they want to conduct themselves and potentially hang me out to dry. So maybe it's fair to call it a financial business issue, because in that light, no amount of money would be sufficient.

Q. All right. Has plaintiffs' counsel advised you that Mr. Smith said there were no ethical issues and made that representation to the court?

A. If he made that representation, then shame on him, because there are ethical issues up and down including perjurious testimony, including perjurous affidavits, including false

representations by counsel, and there's, obviously, a huge ethical problem in house at Ford. And to say that there's no ethical issues is more than trying to put a pretty face on a bad situation. It is misleading the court.

Q. We'll get back into all that. We kind of got into your opinions while we're reviewing the documents you have there. Most of that was triggered, I guess, by Defendant's 21.

A. You asked me why it was famous or

certainty, we should go through categories of witnesses.

Have you communicated with the Strickland family?

A. Have not.

Q. Have you communicated with any of the

engineering experts?

A. No.

Q. Have you communicated with any Ford employees or former Ford employees?

A. No.

Q. Have you communicated with anyone other than Mr. Bell and maybe Kendall Few, Mr. Dean?

A. And Jeckel.

Q. Jeckel?

A. And Kim Pring, and, of course, office staff at Mr. Bell's office.

Q. That's the universe of persons that you've consulted in forming any opinions you have in this case?

A. People I've talked to, that's true.

Q. I asked you earlier about an engagement letter, and I believe you said there was no engagement letter for this -- your work in Strickland; is that correct?

A. Right.

Q. How are you being compensated for your work in Strickland?

A. Hourly.

Q. And how much are you being paid per hour?

A. 350 an hour.

Q. And you told me you had done some work with Mrs. Jeckel before?

A. Right.

Q. Have you done any work with Mr. Bell's firm before?

A. I don't believe so. Well, many years ago when he was in Sumter and much younger, there was something that I helped him and some other lawyers on, but in the last say 15 or 20 years, nothing.

Q. What percentage of your time is spent -- your occupational time, your non-recreational time is spent doing expert witness work or analysis?

A. It varies. I would say in the last year, maybe 10 percent. Not very much.

Q. And what percentage of your income is derived from those activities say in the last year?

A. I wouldn't say more than 10 percent.

Q. You've given me a list of cases.

A. Right.

Q. I believe that list of cases is just cases in which you've testified?

A. True. Yeah, at a deposition or in

majority plaintiff's side.

MR. BELL: Keep going. This is the call I've been waiting on. Keep going. No problem.

(Mr. Bell exited the deposition room.)

BY MR. JOSEY:

Q. Would you rather I wait?

A. No. No, I want to --

Q. Do you have a deadline?

A. I don't. I don't want to waste your time.

Q. Can you give me the names of cases, as many as you can, and the jurisdictions in which your testimony has been excluded to your knowledge?

A. There's a case involving -- it was Q tam case involving Westinghouse, and that was Judge Currie, and I think that's the only case. There's --

Q. Dawkins v. Fields?

A. There's Dawkins v. Fields. They rejected an affidavit, and there's a case involving corporate blowout in Aiken where Judge Peeples did not let me testify.

Q. Name the case.

A. Don't know. I was working for Nelson

Mullins at the time.

Q. Do you remember who at Nelson Mullins?

A. Yes. Clarence Davis.

Q. And maybe I should broaden my question to excluding your testimony and/or affidavits. What additional --

A. I don't know of any.

Q. Do you have any personal knowledge, outside of what you've gleaned from the documents we've identified here today, of how documents are created at Ford Motor Company?

A. No.

Q. Do you have any personal knowledge, outside of the documents you've identified today, of how the CCRG works within Ford Motor Company?

A. No.

Q. Do you have any personal --

A. Well, other than, you know, talking to counsel and CCRG as an acronym that is used in conversations because we got CCRG studies that are involved in this case, and I've talked about it with counsel, but I don't have any Ford documents aside from the documents that I've produced here today.

Q. Right. And my question was just do you have any personal knowledge of how the CCRG

works outside of what you've identified here?

A. Not outside of what's reflected in the documents.

Q. And to the extent counsel has given you information about how it works, have you relied on that in reaching any of your opinions?

as to connotating a jury pool and excessive improper behavior either by defense lawyers, plaintiff's lawyers, prosecutors, but it's not something I have an opinion about here today.

Q. One way or the other?

A. I just don't have any opinion about it. It's not something I've considered.

Q. Another one of your answers indicated that the data you reviewed included all of this, included the newspaper article, and in preparing for today, you also have had conferences with counsel.

A. True.

Q. How many conferences have you had with counsel?

A. Let me break it down. I met with Mr. Jeckel in Charleston. I met with Mr. Bell here twice. I've had numerous phone conversations with Messrs Jeckel, Bell and Kevin Dean, and I also mentioned earlier Kim Pring. She's not a lawyer, but she's been involved in this.

Q. She's an assistant in Mr. Bell's office?

A. She is. She's a paralegal and kind of the document honcho.

Q. You told me earlier you were billing by the hour. Have you itemized or totalled out your hours from all these conferences you've just described?

A. I haven't totalled them out. I would estimate in the area of 45, 50 hours as I arrived here today.

Q. And do you keep time sheets like us unfortunate lawyers sometimes?

A. No. I'm going to have to go back and reconstruct my time. That's just a ballpark in this matter.

Q. Have you submitted a bill to date in this matter?

A. Have not.

Q. Continuing with the disclosure. This indicates you may testify about Ford's conduct in responding to the discovery requests and court orders concerning discovery. And then it specifies that you may have an opinion on the propriety of Ford's action or inaction relating to the -- it says Hayward, but we believe it should be Strickland -- litigation and discovery. Tell me what opinions or areas you have and that you anticipate testifying about.

A. I think Ford's been guilty of discovery abuse -- serious discovery abuse in this case concerning the door handle, the document disclosure and concerning efforts to place evidence out of the reach of plaintiff's counsel. That's a headline.

Q. Are there subtitles to that headline?

A. Various manifestations of what I consider to be improper behavior. I mentioned perjury. Mr. Ayub has lied, has admitted he lied. Giving deflecting attention from crash tests, which are important pieces of evidence for lawyers and cases of this sort. That's inexcusable. I know of no explanation other than the guy is happy to engage in criminal activity.

Q. When you say he admitted he lied, are you referring to the transcript you read earlier where he admitted he was incorrect in an earlier deposition?

A. Yep. Exactly. Mr. Wheelock I believe lied in his deposition and he presented a false affidavit to the court, and I, also, fault him for supplying false and fraudulent information to Mr. Smith for Mr. Smith's reliance in the March 27 letter and as counsel for Ford. I fault Ford

in-house lawyers for having either non-existent or miserably inadequate controls over documents concerning door handle defects or alleged defects.

I think it is astounding and just outrageous that massive amounts of documents concerning a planned half-a-billion-dollar investment in fixing a problem -- though I'm aware that Ford later denied that there -- and still denies that there was ever any problem at all. That these documents which are clearly relevant, which

any first-year law student would understand to be clearly relevant to a F150 PN96 door opening case were hidden for years by Ford, and by hidden, I want to be explicit. Ford originally produced a CDR -- CD not read/write but --

Q. CD rom?

A. CD rom disk in a non-searchable way, basically, pictures of documents which is for whatever reason there was search software available that was not supplied to counsel. The representation was this is the door handle collection, this is what we got. I don't believe Kimberly Bowden-Adair and other similarly knowledgeable people at Ford could possibly have believed that to be true because they had to know

about the PN96 problem. They had to know about the 6J08 problem, 6J01. They had to know that these documents existed. They had to know about the settlement documents. I believe they had the settlement documents, and instead, they hid those documents.

It is astounding and beyond belief to me that when the CDR is reviewed, that there are no 6J08 documents on there. That the only way that the documents were found was by Kevin Dean going in June I believe of '02 and insisting that he be allowed to look at paper records and finding six boxes of paper records of the supposed door handle collection that

were not on the CD rom, which he and counsel had been told by Ford -- by Ford's counsel was a complete collection.

And in those boxes he found two different documents referencing 6J08 and then things started to take form. But even from that point on into the spring of 2003, you had Ford denying and misleading saying, essentially, that those investigations have nothing to do with this case, have nothing to do with the F150 in the Strickland case. Counsel's wasting their time. Counsel's misleading the court. Counsel's harassing and being

abusive.

And it's all degrading, blaming, attacking personally opposing counsel when the reality is that there's a massive amount of documents that, to the knowledge of the Dearborn people, haven't been produced and aren't being produced. And then it's only when evidently Nelson Mullins sends some lawyers to Dearborn that things change in the August/September time frame. An order is issued incorporating the June -- the September 3rd letter, the orders issued on September 4th.

Then we start to have these documents being produced in volume. Then we have Mr. Joel Smith exit and withdraw reliance on his letter and withdraw the affidavit, and to me that is a shocking

development. I know that there -- he makes, from what you say, an explanation to the court that everything's fine and all this --

Q. You don't have to take my word for it. Just asking have you been told that?

A. And that's -- in the annals, and I've been dealing with ethics here in South Carolina for 30 years, that is a remarkable shocking event in a case like this, in a firm like that, withdraws

reliance on a letter that it wrote -- a detailed letter that it wrote concerning discovery and withdraws a leading corporate official's affidavit, that is un-- unknown to happen. That is just shocking, rare occurrence in South Carolina. It may have happened in other cases. I just haven't heard about it, and I hear about cases all the time.

So then we come around the bend and we know that when he wrote the letter in March, in April, in that time period, he had more attacks on the plaintiffs' lawyer, you know, no more discovery, frivolous door handle accusations. They don't have anything. One view is trying to keep the lid on, trying to foreclose any inquiry, but even today in the last two weeks, we've gotten Logel's interrogatory answers and Kimberly Bowden-Adair's interrogatory answers. And as a lawyer and as a law professor in the ethics area, I sit here and say does Ford really get it.

You've -- those orders -- those interrogatories, as I understand, were sent out under court order -- or with -- pursuant to court permission, and what I find in there is evasion. I find not answering discovery requests by those people. Then I find them not even signing their own

answers to the interrogatories that are posed to them, but some stamp by Mr. Smith signing that. And so you're going to have a, you know, meet and confer, motion to compel.

And what does it take before Ford decides to just play straight? Maybe it takes a default judgment. Maybe it takes a massive fine. I'd like to think that the company had seen the light having been essentially stalked by these plaintiffs' lawyers all the time blaming them you're dilatory, you're harassing, oh this, and then finally coughing up this bonanza of documents with this breathtaking news that they're claiming a defect about something that actually Ford engineers thought at one point was defective, and the Ammerman case.

In Ammerman, Ford is coming in after losing claiming that they should have been allowed to talk about crash tests, because if they had been allowed to talk about that evidence, they could have undercut the credibility of the plaintiffs' expert. Well, what would -- Ford says, you know, it's

admissible. We could have used it. I could have turned the tide for us. Well, what on earth do you think plaintiff's lawyers in a defect case might be

able to do with documents from Ford engineers saying golly, we think there's a defect here with these door handles? We think we ought to spend, you know, half a billion dollars and fix it, put -- you can say well, oh that was false or they were just, you know, mistaken, but that's something that is a piece of relevant evidence that maybe the jury ought to hear about.

Who on earth inside of Ford could think those documents were not relevant? And I'm going to answer my own question. They knew they were relevant. They just did not want to see -- let them see the light of day. And there's more. I want to say more, and then I'll shut up. Let me finish.

Q. I want you to finish --

A. Because you asked me what I thought about Ford. Now I'm going to finish with this. Bringhurst and Medina, Mr. Bell tells me he tried to get the lawyer for the plaintiff in Bringhurst to talk to him. That lawyer told him that the file in Bringhurst is sealed so tight that not even God can unseal it, that he will not divulge anything about his case for fear of punishment by Ford, okay.

I think that that boarders on

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obstruction of justice, and here's why. You've got a witness in -- you've got evidence out there, not just a witness, but a victim who is supposedly barred for life from ever divulging that evidence to somebody else who might be able to use that in the courtroom. Read my article on "Cover Up of Wrongdoing." And I think those are -- agreements are fraudulent. I think that they're obstruction of justice. I think they're illegal. There may be a compounding issue as to entering into those agreements, and that is criminal.

I think Ford, to the extent that it tries to buy secrecy in order to hide evidence in related cases, is engaging in improper acts, and I've got some authority which I cite in here for that proposition. And I don't distinguish, Rene, between Ford taking all the documents and all the evidence relevant to the Bringhurst case, which I have reason to believe is relevant -- it's referred to in these documents -- and taking it out and burning it or burying it or otherwise destroying it. I don't distinguish between that and Ford going and buying silence to put those documents beyond investigation by other victims. I think it's reprehensible. I think that there are potentially

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document, stamp it, you know, attorney/client privilege, now we're making it privileged. The sign is that that's what was going on at Ford and may still be going on.

Q. Do you have any personal knowledge of how those documents were created at Ford?

A. Only this: That if Salmon wasn't creating the report on the 12 different crash tests as part of a legal advice colloquy with general counsel's office but was instead doing it for technical business reasons, then it was not privileged.

Q. Again, my question is do you know how --

A. I'm trying to answer the question. We know that it created the document, okay. Part of the document at the top, the legend is the privilege claim is at the request of legal counsel, so we know that legal counsel requested that he label the thing as priveledged, okay. Here's what I want to know --

Q. Wouldn't that be sound advice if counsel asked him to create the document as part of

a colloquy with counsel?

A. Then that would be fine, and we know that good lawyers are prone to label things privileged that are privileged. Here's my question: If this is privileged, why is it being produced? Because if it's privileged and it's being produced,

then I'll turn to Mr. Bell and tell him that they have waived the privilege as to the entire subject matter of all their crash tests and all the defect problems that they have with PN96, and they are not entitled to claim privilege as to any of those documents because, as you know, Mr. Josey, once you waive privilege as to part of a collection of privileged documents concerning that subject matter, it's waived as to all of them.

So there's one of two things going on with the Salmon document, it either is privileged and has been produced in which case it's a waiver of everything concerning crash tests of PN96 defects, and that means start printing out for Mr. Bell and everyone else around the country all these allegedly privileged documents, or it was never privileged to begin with, in which case, that plays into my position of improper behavior, improper cloaking of unprivileged documents with the privilege claim to

defeat plaintiff's investigations. It goes one way that hurts Ford or another that hurts Ford. There's no middle ground there that I see. That's an opinion I hold.

Q. I understand. My question was: You don't have any personal knowledge of the circumstances of how that document was created?

A. Only that somebody told the author, evidently Mr. Salmon, to put on it --

Q. How do you know he didn't just do that on his own?

A. It says at the request of legal counsel. He's not legal counsel. Somebody within the legal staff told him to cloak -- try to get that thing cloaked with a privilege. And my point is simply this: Either it is a valid privileged document, in which case Ford had no business producing it and has waived the privilege by doing that as to that entire subject matter, or it was never privileged, in which case, that lawyer who claimed privilege on it was perpetrating a wrong on people like Mr. Bell.

Q. And ultimately, the decision of whether something is privileged or not within the context of the Strickland case is not yours to make

but the court's; is it not?

A. Well, there are other people who make that decision. Ford makes its own independent decision whether it's privileged. The court may agree or disagree. Ultimately, the final arbiter of that may be the US Supreme Court, for all we know. It will be a judicial officer at some point. But in this case, there's no way that a court's going to find that the thing is privileged because it's been produced. How could it possibly be privileged when Ford's released it --

Q. Well, at the time the privileged log

investigating a case as the fine people around the country who have got similar cases and connect with them and then compare notes. That's why we had Mr. Bell at counsel's table in Guzman. They finally linked up.

But for a long time they were kept where neither knew that the other existed. And certainly the Guzman documents like the complaint in Guzman is a document, unprivileged documents, public document that Ford has and knows about is relevant

to this case is not produced. That's pretty much the essence of what I have to say. Before we go further, I'd like to take another break.

Q. Okay.

(A recess transpired.)

BY MR. JOSEY:

Q. In reaching your opinions, I can guess, but I'm not going to guess, tell me what methodology you used to reach those opinions.

A. The legal profession doesn't have any kind of mechanical yardstick for determining when something is okay or not okay. From an ethics standpoint, we have certain standards. I have a lot of experience, knowledge, background, training, experience. I've been involved in some litigation. I've taken some depositions. I've studied cases where you have issues of perjury. Studied issues concerning discovery abuse.

Have written about discovery abuse. Taught about discovery abuse to lawyers and law students. I've testified. And the -- it's a combination of what I've seen, what I know concerning the applicable standards concerning what makes sense or what doesn't make sense, what's plausible and what's not plausible. It's led me

down the road to the opinions that I hold.

Q. And your initial comment that there is no mechanical methodology or yardstick in the legal profession would mean that your opinions are not subject to being mechanically tested?

A. They're subject to being refuted by say another expert. You don't have any gizmo for sale for 29.95 or the secret decoder ring that you can point at something and say that thing just lit up, that's discovery abuse. But for example, there are articles that are written about discovery abuse, what it is, what the dimensions are, what the manifestations are. Lawyers are taught about discovery abuse.

We just finished last Friday, I was given a CLE with Justice Pleicones swearing in people on our new oath of office that requires honesty, trustworthiness, civility and discovery -- I was talking about discovery abuse there because it's a manifestation of incivility among lawyers, and now it's subject to discipline in this state.

So in terms of the propriety of behavior by lawyers in their conduct of litigation, that is something that is, you know, fit -- subject for experts. There isn't any one yardstick that you use, but

there are principles that you use, and I think experts would commonly agree upon.

Q. And there's no way to calculate or test the error rate in your opinions on these subjects; is there?

A. You can go -- the only way to do it and test an error rate is to test instances where somebody's testified and been proven wrong.

Q. Proven wrong in what way; different jury conclusion?

A. The position is rejected whether it's by a judge or I guess by a jury. If you testified 20 times that something's legal malpractice and 20 times the other side wins, then, you know, I think the fair inference would be that you don't know what you're talking about.

Q. One of your more recent forays into Florence I think you ended up on the losing side; did you not?

A. That was reversed on appeal, and the case was -- has been remanded. The side that I was testifying for was rejected, and then the decision was overturned on appeal, and the case is back in front of the court.

could have happened, and it's no big deal.

Q. -- that you would understand a witness forgetting about?

A. Yeah, as opposed to a half billion dollar problem that when it's disclosed, shows up on the front page of the local Detroit newspaper on a Sunday.

Q. But again, you don't know how big a deal that is for firsthand knowledge of the whole context for what CCRG might have dealt with?

A. From the whole context of what they might have dealt with, I can't say that I do know, but my belief is that it's a big issue. And the reason I say that is because it seems to John Freeman like a half a billion dollars, particularly

when you gotta go up to the vice president level or officer level, that that is a big deal and it's not something that, you know, say a test driver rolled a truck and a door came open and he never told anybody about it. So it happened at Ford and Ford in the sense was responsible. But, you know, it's just a narrow one-time occurrence. You could see that getting lost in the shuffle.

I don't believe you have a half-billion-dollar recall even being contemplated without a bunch of people -- substantial people in the company knowing about it. And Mr. Wheelock was that, and I believe that his answer fits the

evasion, the falsity theme of the treatment of this particular defect or alleged defect.

Q. All right. You believe his initial deposition testimony was perjurious?

A. Perjurious, yeah. Then he puts -- then he follows it up with a false affidavit that Ford revokes and -- but hasn't said yea or nay about since the Joel Smith letter was written that I know about. Mr. Wheelock has got some explaining to do is my view.

Q. And your opinions with regard to Mr. Wheelock are based upon his own deposition, I

believe you said page 25?

A. That's right.

Q. Anything else?

A. Well, his affidavit which is bogus which gets withdrawn.

Q. Your conclusion that it's bogus is that just based on the fact that it's withdrawn?

A. No, on the content.

Q. And the content seems bogus to you in light of what?

A. In light of the truth of -- concerning the significance of 6J08 to this case, the fact the finding of a defect of the -- on the F150 vehicles. He and Joel at that time, as I read their presentations, and, again, they're almost exactly in pertinent part verbatim, are saying your hounding us

may be concealing today other than Bringhurst and Medina which I fault for concealing.

Q. And with regard to Bringhurst and Medina, you mentioned that settlements had been

sealed and that the lawyer that Mr. Bell contacted said that he was scared to talk, otherwise, he'd be punished by Ford. Typically those orders are enforced by courts, are they not, not by parties?

A. The impression I got was that there may be financial sanctions in the agreement that come down on his head and he is not going to say a word period. Go away.

Q. Have you seen the agreement?

A. No, but I'd like to, and if Ford wants to show it to me, I'd be happy to -- I would be -- I would love to see that agreement.

Q. But you have an opinion based on an agreement that you haven't seen?

A. I have an opinion based on Mr. Bell's contact with the lawyer and his terror at doing anything that could jeopardize him.

Q. Since you mentioned the Salmon documents and that Mr. Salmon testified you belive that he had produced the documents to -- or given the documents to Kim Bowen-Adair --

A. Somewhere in my discussion --

Q. I was going ask you to refer to your materials and tell me where that is.

25 A. I believe it was from counsel the

Salmon -- Salmon's file cabinet of documents, and it may have just been a euphemism or there may be an actual file cabinet that his documents concerning what Adair calls the 2000 F150 door handle investigation got turned over to I thought the general counsel's office at Ford. And my recollection is that Kim Bowen-Adair was involved in that transfer, and I could be wrong.

Q. At what point in time?

MR. BELL: Would you like me to point out something for brevity purpose?

THE DEPONENT: No, that's fine.

BY MR. JOSEY:

Q. At what point in time?

A. You know, in my mind's eye, I saw her at some early point as he's leaving and these documents are coming in knowing about the documents being aware of the documents.

Q. As Salmon is leaving Dearborn?

A. To go to Cincinnati or wherever his family moved to.

Q. So you believe that he produced this cabinet of documents as he's leaving Dearborn to go to Cincinnati?

A. Well, I don't -- look, I wasn't there,

documents are kind of being produced simultaneously in Texas and South Carolina.

Q. These documents were produced in Guzman; were they not?

A. I haven't gone item by item. I believe that a lot of door latch documents were. In fact, there was discovery -- joint discovery at some point agreement in Guzman, but I also believe that there may have been some documents that showed up in one place that the other side -- that people in say South Carolina -- showed up in Texas and South Carolina didn't have or vice versa.

Q. For how long a period of time; a day?

A. I don't know.

Q. You would agree with me that the

mechanics are such that something might arrive in production one day in Texas?

A. Yeah, Federal Express is not obligated to deliver things simultaneously around the country

(A recess transpired.)

BY MR. JOSEY:

Q. Have you read the -- in these materials, the transcript of Magistrate Judge Tom Rogers May 19th hearing, May 19th of this year?

A. I don't think that's in here.

Q. That would be the hearing where he allowed the service of questions directed to Kim Bowen-Adair. Have you read that?

A. No, I haven't read that.
Q. One of your opinions was that you thought Ford had been evasive by not having them personally answer those interrogatories?
A. That wasn't my opinion. My opinion was that the answers are evasive, some of them, and -- or nonresponsive and that they should have personally signed their own interrogatory answers.
Q. And not having read the transcript of Judge Rogers, what's that based on that they should have signed those?
A. It's based on my discussion with

plaintiffs' counsel.
Q. Have you been asked to assist with or consult on the preparation of a sanctions motion in this case?
A. No. I'm aware that they may be making one, but I'm not a lawyer. I'm a witness, and I'm aware that there's a possibility that what I say might be relevant to that, but I'm not helping them on any sanctions motion.
Q. You mentioned earlier something about having an answer stricken in this case as a result of what you've concluded as discovery abuse. Have you heard counsel say that that is a goal for them?
A. That's -- that is on a menu of possible outcomes I believe. I don't know that that is the goal. I don't think that they would be very

sorry to see the answers stricken.

Q. But did that -- did your menu of possible things come up in a discussion with plaintiff's counsel?

A. It did.

MR. JOSEY: Ed, I think I might take you up on that offer a few minutes earlier to locate a place where Jim Salmon's -- I assume that's within the notebooks he has.

MR. BELL: It may or may not be. As I recall, and I stand to be corrected, either in Salmon's deposition in Guzman or somewhere else, he may have testified he gave these documents to Adair when he left I believe in December of 2000. That's my understanding, but I did not take the deposition, but somewhere there. Now, there is also a brief filed by Ford -- I don't believe Professor Freeman has seen that -- in Guzman whereas I recall, again -- and I'll have to refresh my memory, but my recollection is that Ford represented to the court that Ms. Adair had looked at the documents on September 3rd, '03, because there was a motion filed against Ford for additional sanctions after Salmon mentioned at his deposition he had this file cabinet full of documents.

Then there was another memorandum or the same memorandum that represented to the court that those documents had previously been produced.

Later, Ford filed an amended motion -- or memorandum that, basically, refuted its own prior memorandum that some had been produced, some are not.

Are those things that you relied on in reaching your opinions?

THE DEPONENT: First, I did not get

his testimony in Guzman. Secondly, I did get -- he's just refreshing me, but it's consistent with my prior testimony that I was told when Salmon left, he gave the documents to Adair, Bowen-Adair. That may not be true, but that was what I understood. It's what I testified to and it's what he just said.

BY MR. JOSEY:

Q. And your source of information from that was Mr. Bell?

A. That's right. I don't have the Salmon --

Q. If you have something that says that, a document that says that Kim Bowen-Adair had the documents in 2000, I'd like to see it.

MR. BELL: Tell you what I'll do --

MR. JOSEY: I'm asking him.

MR. BELL: I understand, but just because you asked me, I will locate if possible those things and furnish them to both you and counsel -- I mean you and Mr. Freeman to make sure my memory is correct.

BY MR. JOSEY:

Q. I want to know if he had them as we sit here today, that's been the basis of your opinion as you sit here today?

A. No. I gave you the basis. I told you I didn't have his testimony. There's one other -- since we're talking about Salmon I believe is how it's pronounced, there's one other aspect that I want to be sure you're aware of, and that is that at the time that plaintiffs had no either zero or very few 6J01/6J08 documents, Mr. Bell had a colloquy, which you may or may not know about, with Mr. Smith saying that he wanted to take Salmon's deposition.

And he was told that Salmon had nothing to do with this. Didn't know anything about it. That if he tried to take the deposition, he would be greeted by a motion for sanctions for harassing Ford, that they would make available to him Salmon's deposition I believe in Fipps, but I could be wrong on that, and this guy doesn't have anything, doesn't know anything. You're abusive in trying to get anything, and that is a fact that I take into account in my analysis.

Q. And that is a information that was relayed to you by counsel?

A. Right, concerning information imparted to him allegedly from Mr. Smith in a taxicab conversation.

Q. Can you tell me what discovery request

a bad question. It may be a mediocre question, but,

you know, that's what you're suppose to do in discovery, not answer a different question or say what the heck you feel like saying, and she knows that.

"Please describe all efforts you have undertaken personally to comply with this court's order of September 2003. Under the direction of Ford employees, I have interviewed numerous employees, collected numerous documents and made good faith efforts to comply with Ford's discovery obligations in this case, including the agreed to order dated September 2003." That's, you know, broad, unduly burdensome, so forth. Just vague.

"Identify all Ford office of general counsel attorneys" -- there's an error here, from whom have given you direction -- "who have given you direction at any time. Wording is confusing," she says. It's true. "I worked at the direction of various attorneys." You know, have a nice day. You didn't know before, you don't know now. I ain't telling you. That's not proper. She knows that. Whoever helped her on this knows that. That's just wrong.

"Identify the first date you actively participated in the Ford sweep for documents

responsive to plaintiff's discovery request." Now, what I understand, based on counsel, is a forward sweep for documents is a term of special significance to Ford that doing a document sweep has special meaning.

Q. What's the basis of that understanding?

A. Counsel telling me that when they do a sweep -- you remember --

Q. Counsel, Mr. Bell?

A. Yeah, Mr. Bell. In the September 2003 agreement, the word "sweep" is used all the time. We're going to do a sweep. We're doing a sweep and all that. And, you know, I had read that consistent use of that one term, you know, kind of stuck with me. And then he told me that that's a special term of art in their protocol at Ford. And that term is used here, "a Ford sweep for documents."

Q. Have you never heard the term sweep used in any other case or context?

A. It can be used in an informal way. That's why my ears perked up. When he told me that it had a special term, because I had already seen it being used so many times in those September 2003 related documents, and, in fact, I spoke with him

about this particular interrogatory answer because

he explained to me here that they were asking -- using the term that she well understood, what I understand --

Q. What did Mr. Bell tell you the meaning of sweep is to Ford as compared to common understanding?

A. He just told me it was a term that they used in house when they go looking for things. Doing a sweep is a certain protocol that they have. I could be wrong on that.

Q. Did he tell you what the protocol was?

A. He didn't get into the A to Z. He just told me that.

Q. Isn't that the ordinary meaning of sweep in the context of litigation document searches?

A. You know, the truth is I don't know the ins and outs of what a Ford sweep is and how it might relate to what other people would say is a search or, you know, a review or whatever they might call it. But I do know this: The question is the first date you actively participated in a sweep, all documents you took possession of and from whom. It's just not answered. You know, I've interviewed

employees, I've collected documents, I'm not telling you what documents.

Q. You're paraphrasing the answer now?

A. Yeah. I mean where is the detail

Q. I handed you that list just to see if that refreshed your recollection of any -- of those experts. Those aren't your -- you weren't the counsel in those cases.

A. No.

Q. You don't have any information that Bringhurst or Medina, for example, involved a painted door handle with a weak spring; do you?

A. I think that there were PN96 cases or else why would they -- again, my recollection is that they surfaced in the CCRG materials. They wouldn't be in there unless --

Q. It is your information that all PN96's have weak springed handles or --

A. No, I think springs have been fixed in some of these recently. As of a certain time, they made adjustments.

Q. So again, you don't have enough information to say that this recent discovery of documents would effect the value in Bringhurst or Medina; do you?

A. I believe -- I believe that they predate all this disclosure. I believe that they were settled at a time when the lid was sealed, and

if Ford thinks -- wants to show that that's untrue and open Bringhurst and Medina, I would apply that.

Q. My question is: You don't even have enough information to say these documents are

relevant to the facts of those accidents; do you?

A. Yeah, they're in the CCRG, and I have every reason to believe that they're relevant.

Q. You've mentioned Rule 5.1, Rule 5.3. I think earlier you mentioned Rule 1.6, and feel free to -- can you tell me what other rules have come into play in your analysis?

A. Well, I listed them just the quickest way is if I can dig in here and find them. 3.1.

Q. Is that something we forgot to mark?

A. No, it's in here. I brought two copies of it. I don't mind you marking this just to be on the safe side.

Q. Go ahead.

A. "Lawyer shall not assert or controvert an issue unless there's a basis for doing so that is not frivolous."

Q. Defendant's Exhibit 8?

A. Right. And in telling somebody that there's no 6J01 6J08 doesn't have anything to do with this. Salmon doesn't have anything to do with

this. You can take his deposition, we're going to sanction you. You know, if you don't know what you're talking about, you shouldn't say anything, and if you do know what you're talking about, you shouldn't lie.

3.2, expediting litigation. I believe there's a duty and you know that there's an ethical

duty to expedite, and that is which is to say not to be dilatory and constantly if you go through the material, you see plaintiffs being attacked for being dilatory, dragging their feet, not doing their work da, da, da, da, da statement, documents are being withheld secretly from them or documents are not being produced to them.

3.4, fairness to opposing counsel is relevant. Obstructive tactics in the discovery procedure. 3.4 again, I think that is in there. 8.4(c) conduct prejudicial to the administration of justice. There's another 8.4 rule which I believe was on Mr. Smith's mind when he wrote his retraction letter in November. The other 8.4 rule is 8.4 (d), lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation. And that goes to him withdrawing his letter which is a polite way of saying that letter is wrong, it's

bogus and withdrawing of Wheelock's affidavit.

Q. And, again, your opinion was formed without the benefit of any direct information from Mr. Smith about his withdrawal?

A. True, as I rest on my prior testimony.

Q. I think I may be through.

MR. BELL: Want me to ask some questions, and if you have anymore, you can follow up?

MR. JOSEY: Okay.

EXAMINATION

BY MR. BELL:

Q. Mr. Freeman, is it your understanding at this stage that the information you've received from our office, as well as the documents, that while Joel Smith's involvement made certain representations that later turned out to be false, that you were getting that information from Ford and relying on his client to give him accurate information?

MR. JOSEY: Object to the form of the question.

THE DEPONENT: That's my understanding.

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BY MR. BELL:

Q. And there's no allegation at this time or against Mr. Smith that he has done anything improper or unethical because his client lied to him?

MR. JOSEY: Object to the form of the question.

THE DEPONENT: I'm not attacking Mr. Smith personally.

BY MR. BELL:

Q. Now, if you don't mind, I'm going to go back through, in a backwards form, some areas that may have been asked and let me ask you a couple

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

ZACHARY STRICKLAND, JERRY I. STRICKLAND AND MARSHA STRICKLAND, Plaintiffs, v. FORD MOTOR COMPANY AND FAIR BLUFF MOTORS, INC., Defendants.	)	Civil Action No.: 4:00-1391-23

PLAINTIFFS' SUPPLEMENTAL RULE 26 EXPERT DISCLOSURES

Pursuant to Federal Rule 26 and the parties agreements, the Plaintiffs hereby amend and supplement their previous disclosures as set forth herein. Based upon information and documents identified to date, as well as discovery conducted to date in this case, Plaintiffs hereby designate and disclose the following experts and areas of expected testimony Plaintiffs intend to offer into evidence upon the trial of this matter:

I. LIABILITY EXPERTS

1. Woodrow W. Poplin, P.E.
Poplin Engineering
Charleston, SC

Mr. Poplin is expected to give expert testimony in the areas of accident reconstruction and the cause(s) of the accident. Specifically, Mr. Poplin will testify to the direction of forces, as well as accelerations on the vehicle, seatbelt, passenger door and the occupant's and truck's response thereto. He will also explain the accident sequence and will provide a

ATTACHMENT B

Mr. Whitfield will discuss what statistical data and information is available to Ford at various points in time through publicly available sources, as well as internal Ford sources. Mr. Whitfield may discuss the statistical significance of publicly available data as it relates to the alleged defects in the Strickland vehicle. Mr. Whitfield may also discuss the type of research and statistical data complied and analyzed by the Insurance Institute For Highway Safety and the National Highway Traffic Safety Administration. Mr. Whitfield will also review statistical data analyzed and compiled by Ford Motor Company's expert statistician, Rose M. Ray, Ph.D. Mr. Whitfield will testify about the data set utilized by Rose M. Ray, Ph.D., as well as methodology of analysis. All prior disclosures, answers to interrogatories and his depositions are also incorporated herein by reference to this disclosure.

8. Professor John P. Freeman
University of South Carolina, School of Law
701 S. Main Street, Law Center 406
Columbia, SC 29208

Professor Freeman is reviewing data concerning, and may testify about Ford's conduct in responding to discovery requests and court orders concerning discovery. Specifically, Professor Freeman may opine on the propriety of Ford's actions or inaction relating to the Hayward litigation discovery in the context of the standards of truthfulness, fair dealing, punctuality, and professionalism under the Rules of Professional Conduct applicable to lawyers involved in matters in Federal District Court in South Carolina.

9. Mr. Keith Radak
Senior Reliability Analyst
Detroit Diesel
13400 West Outer Drive
Detroit, MI

Keith Radak is a reliability analyst for Detroit Diesel company and is part of the reliability department at Detroit Diesel. Part of Mr. Radak's job involves design and analysis of

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing PLAINTIFFS' SUPPLEMENTAL RULE 26 EXPERT DISCLOSURES was served via regular U.S. Mail, postage prepaid, and via facsimile on this 19th day of April 2004 to the following counsel of record:

John S. Wilkerson, III
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GAMAE M. THORNTON

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FLORENCE DIVISION

Zachary Strickland, Jerry I. Strickland and Marsha Strickland Plaintiff	)	
v.	)	Civil Action No.: 4:00-1391-23525BH
Ford Motor Company and Fair Bluff Motors, Inc.	)	

PLAINTIFFS' MOTION TO COMPEL THE DEPOSITION OF ROBERT WHEELOCK UNDER COURT SUPERVISION IN FLORENCE, SOUTH CAROLINA

Plaintiff moves this court for an order directing Defendant Ford to produce Robert Wheelock for deposition in Florence, South Carolina on or about one day during the week of May 24, 2004 (or such other time convenient to the Court) in order that this deposition can be attended, monitored and objections ruled upon timely and in context during the deposition by the Honorable Thomas E. Rogers, III.

The basis for Plaintiffs' motion is that Plaintiffs have a reasonable belief that they will be able to show that Mr. Wheelock has committed perjury through testimony in deposition and affidavit filed in this case, as well as has assisted the Defendant Ford in hiding critical discovery information in this case. Plaintiffs further have reason to believe that these actions were performed by Mr. Wheelock in association with, or at the direction of, members of the Office of General Counsel of Ford which directly misrepresented and misled Ford's former counsel Nelson, Mullins, Rollins & Scarborough who in turn made misrepresentations to Plaintiffs and this Court related to doorlatch discovery related issues..

Plaintiff anticipates that Ford may interpose objections based on claims of privilege which need be heard by the court at the time the questions are posted and immediate rulings made thereon.

LAW OFFICES OF J. EDWARD BELL, III, LLC

ATTACHMENT 209
C

By: _____

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Federal ID # 1280
Kevin R. Dean
Federal ID # 8046
P.O. Box 2590
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TEL 843/546-2408
Attorneys For Plaintiffs'

MOTLEY & RICE, LLC

By: _____

Joseph F. Rice
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Mount Pleasant, SC 29464
TEL 843/216-9000
FAX 843/216-9430

May 11, 2004
Georgetown, South Carolina

CERTIFICATE OF MAILING

I hereby certify that the foregoing pleading was **mailed and faxed** to all counsel of record in this proceeding on this 11th day of May, 2004.

_____

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH CAROLINA

FLORENCE DIVISION

ZACHARY STRICKLAND, ET AL.,

PLAINTIFFS,

VS.

FORD MOTOR COMPANY,

DEFENDANT.

CIVIL ACTION
NO. 4:00-1391

UNITED STATES COURTHOUSE
FLORENCE, SOUTH CAROLINA
WEDNESDAY, 10:00 A.M.,
MAY 19, 2004.

\- - -

TRANSCRIPT OF MOTION HEARING PROCEEDINGS

BEFORE THE HON. THOMAS E. ROGERS III, MAGISTRATE JUDGE

\- - -

APPEARANCES:

KEVIN R. DEAN, ESQ.
J. EDWARD BELL III, ESQ.
SUMTER, SOUTH CAROLINA
FREDERICK J. JEKEL, ESQ.
CHARLESTON, SOUTH CAROLINA
FOR THE PLAINTIFFS.

J. RENE' JOSEY, ESQ.
FLORENCE, SOUTH CAROLINA,
JOHN S. WILKERSON, ESQ.
CHARLESTON, SOUTH CAROLINA
ROSEWELL PAGE III, ESQ.
RICHMOND, VIRGINIA
FOR THE DEFENDANTS.

PROCEEDINGS RECORDED ELECTRONICALLY
COMPUTER-AIDED TRANSCRIPTION BY VINCE ROLLAND
P O BOX 2317 FLORENCE SC 29503 843-615-1654

ATTACHMENT D

ASSIST IN THAT CASE AND WE DID, WE WENT DOWN AND TRIED THAT CASE.

BECAUSE OF MOTION HEARINGS BEFORE THE STATE JUDGE DOWN THERE -- LET ME STOP A SECOND.

PRIOR TO THAT INVOLVEMENT, WE HAD RECEIVED AN EXTENSIVE PRIVILEGE LOG FROM FORD. JAY LOGEL'S NAME WAS ALL OVER THAT PRIVILEGE LOG. WE STARTED LOOKING INTO THIS PRIVILEGE LOG, AND PRIOR TO SOME HEARINGS, AND SOME IN TEXAS, FORD STARTED DECLASSIFYING PRIVILEGED DOCUMENTS THAT WE REALIZED WERE NEVER PRIVILEGED TO BEGIN WITH.

ONE OF THE MOST DAMAGING DOCUMENTS WAS A DOCUMENT JAY LOGEL WAS INVOLVED IN THAT HAD TO DO WITH THE ANALYSIS OF 12 CRASH TESTS. THIS 12 CRASH TESTS, AND I'LL SHOW IT TO YOU RIGHT HERE, YOUR HONOR, THE BATES STAMP NUMBER IS NOT ON IT, BUT IT'S DATED 11-15-2000.

MR. PAGE: YOU SAID LOGEL WAS INVOLVED WITH THAT?

MR. BELL: I DON'T KNOW IF HE WAS INVOLVED, BUT I'LL READ IT TO THE COURT.

MR. WILKERSON: JUDGE, FOR THE RECORD, WE DON'T HAVE THAT DOCUMENT BEFORE US IN THE COURTROOM, SO WE'RE AT A DISTINCT DISADVANTAGE.

THE COURT: WELL, I'M SITTING UP HERE, AND IT CHAPS ME BECAUSE OF ALL THIS STUFF YOU'RE GOING INTO. I LIKE TO READ THINGS BEFORE I GET IN HERE SO I HAVE SOME IDEA WHAT I'M DEALING WITH. AND YOU ARE TALKING ABOUT

ALL KIND OF THINGS, MAKING ACCUSATIONS, SAYING THINGS AS A FACT, AND IT MIGHT BE SO, BUT I DON'T KNOW THAT TO BE THE CASE. AND IT PUTS ME IN A TOUGH SITUATION TO TRY TO REMEMBER EVERYTHING THAT YOU'RE GOING THROUGH RIGHT NOW, WHEN IT'S NOT IN YOUR BRIEF.

MR. BELL: JUDGE, WITH ALL DUE RESPECT, AND I PROBABLY SHOULD HAVE UPDATED THE BRIEF, BUT THAT PARTICULAR DOCUMENT YOU'RE LOOKING AT NOW HAD NOT BEEN DISCLOSED TO US AT THE TIME WE FILED OUR BRIEF.

THE COURT: WELL, THIS IS ONE OF A BUNCH OF THINGS YOU'RE TALKING ABOUT, THIS THING ABOUT JOEL SMITH AND HE SAID FORD LIED, YOU'RE MAKING SOME PRETTY SERIOUS ACCUSATIONS, AND --

MR. BELL: JUDGE, WE HAVE NOT ONLY MADE THOSE ACCUSATIONS, BUT THE AFFIDAVIT --

THE COURT: I DON'T WANT TO GET INTO THE TRUTH OF THEM, BECAUSE YOU MAY HAVE EVERYTHING LAID OUT. DON'T GET ME WRONG, I'M NOT CRITICIZING YOU FOR DOING WHATEVER YOU THINK YOU OUGHT TO DO, BUT THE FACT REMAINS, I COME IN HERE WITH THIS MOTION, AND Y'ALL FILED A MEMORANDUM. THEY FILED A RESPONSE. SOME OF THESE MOTIONS THAT WE HAVE TODAY, THE TIME FOR FILING RESPONSES IS NOT, HASN'T EXPIRED, BUT I AGREED TO DEAL WITH THEM, PROVIDED WE DIDN'T HAVE A PROBLEM WITH THAT.

BUT YOU KNOW, I -- I'M TEMPTED TO TELL YOU I'M NOT

ISSUE, BUT I RISE FOR THE SOLE PURPOSE OF ADDRESSING MR. BELL'S VERY ELABORATE AND DETAILED JURY ARGUMENT TO THE COURT, THAT HE JUST PRESENTED TO THE COURT, WHAT HE PRESENTED TO BE FACTUAL STATEMENTS, STARTING FROM A TO Z, GETTING TO THE POINT WHERE HE BELIEVES HE'S ENTITLED TO THESE THINGS.

THE COURT: I UNDERSTAND, I'LL LET YOU PUT WHATEVER YOU WANT TO ON THE RECORD. I'M NOT GOING TO CONSIDER ANY OF THAT, BECAUSE THAT IS UNFAIR TO ME, IN TRYING TO MAKE A DECISION, AND MAKING FACTUAL ASSERTIONS AND ACCUSATIONS LIKE THAT, I'M NOT GOING TO CONSIDER ANYTHING THAT IS NOT IN THE BRIEF.

THE RULES PROVIDE THAT YOU SHOULD PUT IT IN THERE, SO I'M NOT GOING TO CONSIDER THAT.

MR. WILKERSON: I APPRECIATE THAT, YOUR HONOR, AND PART OF MY STANDING UP WAS GOING TO BE TO MOVE TO STRIKE THAT CLOSING ARGUMENT THAT MR. BELL JUST MADE, AND MOST IMPORTANTLY, IF YOUR HONOR PLEASE, WITH REGARD TO THE ABSENT MR. JOEL SMITH, WHO AS THE COURT KNOWS, CARRIES JUST AN UNTARNISHED REPRESENTATION IN THIS STATE AND PERHAPS IN THE COUNTRY AS A FINE TRIAL LAWYER, HE'S MADE REPRESENTATIONS AS TO WHAT MR. SMITH ALLEGEDLY TOLD TO HIM, AND I JUST WANT TO MAKE SURE THAT THE RECORD IS CLEAR.

MR. SMITH HAS OFFERED TO ME TO PRESENT TO THE